

Shore & Ocean Services, Inc. and International Longshoremen's Association Local 1922, AFL-CIO, Petitioner. Case 12-RC-7463

June 30, 1992

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

The National Labor Relations Board, by a three-member panel, has considered objections to an election held October 11, 1991, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 12 for and 26 against the Petitioner, with 2 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations,¹ and finds that the election must be set aside and a new election held.

In agreement with the hearing officer, we find that the Employer's granting of two benefits to its employees—a change in overtime computation and the providing of uniforms—within a short period of time after learning of the filing of the petition, constituted objectionable conduct. Although it appears that the Employer contemplated both changes before the advent of union activity, the timing of their implementation gives rise to an inference of improper motivation and interference with employee rights. Under settled Board policy, a grant of benefits during the critical preelection period will be considered unlawful unless the Employer comes forward with an explanation, other than the pending election, for the timing of such action.²

Once the Petitioner made out a prima facie case by showing that the benefits were granted during the crit-

ical period, it was incumbent on the Employer to demonstrate a legitimate business reason for that timing.³ This it did not do. The Employer rests on its assertions that, prior to its knowledge of the petition or union activities, it decided on the changes, announced to employees that the changes would be made, and then proceeded to make them in the ordinary course of business. However, the hearing officer found that the decision as to the uniforms was still in its formative stage at the time of the petition. With respect to the overtime matter, the hearing officer found no basis for concluding that an announcement was made prior to company knowledge of the petition or union activities.

Further, even if the decisions were made and announced prior to the company knowledge of the petition or union activities, the Employer makes no showing that it gave employees a date or timetable for their implementation. In fact, it concedes it had no such date or timetable in mind prior to the filing of the petition. Vice President Lenett set both changes into motion within a week or two of his return from vacation, when he learned that a petition had been filed during his absence, and the Employer has not demonstrated that any business or economic need was driving their implementation at this time.⁴ We therefore conclude, as did the hearing officer, that the Employer failed to rebut the Petitioner's prima facie case of improper interference with employee rights, and that it rushed to implement these two benefits in order to influence the outcome of the election.

[Direction of Second Election omitted from publication.]

³ *Lake Development Management Co.*, 259 NLRB 791, 792 (1981); *Litton Dental Products*, 221 NLRB 700, 701 (1975), enf. denied 543 F.2d 1085 (4th Cir. 1976). Cf. *Red's Express*, 268 NLRB 1154 (1984).

⁴ The Employer argues on brief that once the benefit changes were announced, it was obligated to follow through with their implementation because it had "created expectations" among its employees. On the contrary, the Employer could have announced to its employees that it still planned to implement the changes, but that it would do so after the election, in order to avoid any appearance of improper interference with their choice to select or not to select the Union as their bargaining representative. See *Elston Electronics Corp.*, 292 NLRB 510, 526 (1989), citing *Village Thrift Store*, 272 NLRB 572 (1984).

¹ In the absence of exceptions, we adopt pro forma the hearing officer's recommendations to approve the withdrawal of Objections 1, 3, and 4, and that certain portions of the Petitioner's Objection 2 be dismissed.

² *Honolulu Sporting Goods Co.*, 239 NLRB 1277, 1280 (1979), enf. 620 F.2d 310 (9th Cir. 1980).